

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 4, Article 24, Section 1644 of the Construction Safety Orders

Metal Scaffolds**SUMMARY**

This rulemaking action is being initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a Form 9, Request for New, or Change in Existing Safety Order, dated March 7, 2005, recommending that the maximum height of the intersection of crossbracing used in lieu of a standard guardrail with a midrail on a scaffold be reduced from 36 inches above the work platform to 30 inches. The Division noted that the 36-inch maximum height of the crossbracing intersection, contained in Construction Safety Orders Section 1644(a)(6)(B), is inconsistent with the Federal OSHA counterpart standard found in 29 Code of Federal Regulations (CFR) 1926.451(g)(4)(xv), which permits a maximum height of 30 inches. Consequently, the state standard is not at least as effective as its federal counterpart standard.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 1644(a)(6)(B)**

Existing Section 1644(a) contains general requirements pertaining to metal scaffolds, including but not limited to weight design, planks, ties, use of guys or outriggers to prevent tipping or upsetting, wind loading, and railings. Section 1644(a)(6) requires that securely attached railings as provided by the scaffold manufacturer, or other material equivalent in strength to the standard 2- by 4-inch wood railing made from "selected lumber," be installed on open sides and ends of work platforms 7 ½ feet or more above grade. The top rail shall be located at a height of not less than 42 inches nor more than 45 inches measured from the upper surface of the top rail to the platform level. A midrail shall be provided approximately halfway between the top rail and the platform. Subparagraph (B) to 1644(a)(6) states that "X" bracing is acceptable as a midrail if the intersection of the "X" falls between 20 inches and 36 inches above the work platform. This 36-inch maximum height of the intersection of the crossbracing is inconsistent with federal counterpart standards contained in 29CFR1926.451, which limits the height to only 30 inches.

Pursuant to Labor Code Section 142(a)(2), the Occupational Safety and Health Standards Board (Board) is required to adopt standards at least as effective as comparable federal standards.

Therefore, an amendment is proposed to reduce the maximum height of the crossbracing intersection to 30 inches in order to be at least as effective as its federal counterpart standard. The proposed amendment would have the effect of reducing the intersection height of crossbracing on scaffolds, used in lieu of a standard guardrail with a midrail, for consistency with requirements contained in 29CFR1926.451.

DOCUMENTS RELIED UPON

- Memorandum from the Division of Occupational Safety and Health dated March 7, 2005, to the Occupational Safety and Health Standards Board, Request for New or Change in Existing, Safety Order, (Form 9).
- 29 Code of Federal Regulations (CFR), Subpart L, Scaffolds, Section 1926.451(g)(4)(xv).

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.